



## Broadcasting Decision CRTC 2005-22

Ottawa, 31 January 2005

**Newcap Inc.**  
Sudbury, Ontario

*Application 2003-1691-0  
Public Hearing in the National Capital Region  
7 June 2004*

### **CHNO-FM Sudbury – Licence renewal**

*The Commission renews the broadcasting licence for the radio programming undertaking CHNO-FM Sudbury, from 1 September 2005 to 31 August 2008.*

### **The application**

1. The Commission received an application by Newcap Inc. (Newcap) to renew the broadcasting licence for the radio programming undertaking CHNO-FM Sudbury, which expires on 31 August 2005.
2. The application raised the issue of the appropriateness of the continuation of the business arrangement, described as a local sales agreement (LSA), currently in place between Newcap and Rogers Broadcasting Limited (Rogers), another radio licensee in the Sudbury market.

### **Interventions**

3. The Commission received three interventions in connection with this application, from the Canadian Association of Broadcasters (CAB), the Friends of Canadian Broadcasting (FCB), and Mr. Frank Hartmann.
4. The CAB commented on the issue of whether or not LSAs are captured under section 11.1 of the *Radio Regulations, 1986* (the Regulations), which pertains to local management agreements (LMAs). The CAB's position is addressed in *The Commission's policy on local management agreements (LMAs) - Determinations concerning the appropriateness of various existing and proposed LMAs, including local sales agreements, between the licensees of radio stations serving the same market*, Broadcasting Public Notice CRTC 2005-10 (Public Notice 2005-10), also published today.
5. The FCB alleged that the LSA had resulted in a monopoly in radio advertising, and had the effect of reducing service to listeners, reducing diversity of voices in the Sudbury area, and depriving advertisers of a marketplace in which to present their messages. The FCB also alleged that, in the period since Newcap entered into an LSA with Rogers,

licensee of CIGM, CIMX-FM and CJRQ-FM Sudbury, Newcap has been delinquent in meeting its local programming obligations. Specifically, FCB claimed that, under the LSA, local news coverage on CHNO-FM has been reduced dramatically; that only three full-time announcers, an operations manager, and two part-time announcers staff the station; and that there is no news staff, with weekday morning newscasts being read by the morning co-host. FCB also raised questions regarding the origination of the local news on CHNO-FM.

6. Mr. Frank Hartmann, a Sudbury business person, submitted an intervention that was also critical of the LSA between Newcap and Rogers. In Mr. Hartmann's view, there was no difference between the LSA currently in place and an LMA, and that the LSA accorded Rogers too much control over the operation of the Newcap station. Mr. Hartmann argued that, as a result, there was an unhealthy monopoly in Sudbury's English-language radio market. He also echoed FCB's concerns about reduced local service and inadequate staff levels at CHNO-FM.

#### **The licensee's replies**

7. In response to concerns raised by the interveners, Newcap stated that its focus and commitment to newsgathering and delivery had not changed since the LSA came into effect in 2002. According to Newcap, the news is gathered, written and announced on CHNO-FM by the morning show co-host, who uses various sources, including police and fire department faxes, the Internet (for entertainment reports), broadcast news services, Rogers' stations and local television newscasts. Newcap reported that staff at the station consists of three full-time announcers, the half-time announcer who co-hosts the morning show, a "casual swing-shift announcer" for holidays, an operations manager and a "cruiser person".
8. The licensee indicated that it did not request Commission approval to continue operating under the LSA on the grounds that the agreement was not an LMA, as defined in the Regulations, since it was limited to the radio advertising sales component of the Sudbury stations owned by Newcap and Rogers. According to the licensee, other elements, such as programming, engineering, creativity and administration, have remained under the control and management of each party to the LSA. Newcap indicated that its involvement with Rogers in Sudbury is based on the latter's role as exclusive sales representative, under a mutually acceptable revenue-sharing arrangement. Newcap also argued that, without the LSA, its stand-alone FM station could not compete effectively in the Sudbury market.

#### **The Commission's analysis and determinations**

##### **The Sudbury LSA**

9. The Sudbury LSA provides that Rogers shall act as the sole and exclusive advertising sales representative for the Sudbury stations, with responsibility to secure local, regional and national radio advertising contracts for the radio stations licensed to Newcap and those licensed to Rogers. Rogers is also responsible for all duties related to the sale of

advertising time for the stations, such as providing traffic, credit, sales, invoicing, collection, sales tax remittance, sales management and commercial production services, and has sole discretion in determining the rate card value of any advertising airtime. The revenues from advertising airtime sales generated by the stations as a whole are shared between Newcap and Rogers according to a set percentage.

10. The issue of whether an LSA is an LMA requiring prior Commission approval under section 11.1 of the Regulations was discussed with the licensee at the hearing and is examined at length in Public Notice 2005-10. In that notice, the Commission concludes that LSAs, such as that between Newcap and Rogers in respect of their Sudbury radio stations, are LMAs and, as such, require prior Commission approval pursuant to section 11.1 of the Regulations.
11. In *Local Management Agreements*, Public Notice CRTC 1999-176, 1 November 1999, the Commission announced its policy determinations with respect to LMAs. The Commission indicated, among other things, that it would “be generally inclined to approve” LMAs that: include unprofitable stations; include a number of stations that does not exceed the number of undertakings that may be commonly owned under the ownership policy; and are limited to a specific term and represent a temporary alternative business model that will allow the broadcasters to improve their performance. The Commission added that, in exceptional circumstances, it may approve an LMA that includes the participation of a number of stations that exceeds the limit allowed under the common ownership policy. It emphasized, however, that radio licensees would be required to demonstrate clearly that the participation of radio stations in excess of the allowable ownership limit would be in “the public interest and that it does not create a situation of inequity within the market.”
12. As noted in Public Notice 2005-10, there are four radio stations falling under the Sudbury LSA. This exceeds the number that a single person would generally be permitted to own under the common ownership policy. The Commission noted further that the Sudbury stations reported positive profit margins, before interest and taxes, as of 31 August 2003, with the exception of one of the three stations licensed to Rogers, and that, on a consolidated basis, Rogers’ Sudbury stations did report a positive profit margin as of that date.
13. In the Commission’s view, Newcap failed to present a compelling case that its particular circumstances are exceptional or warrant continuation of the Sudbury LSA currently in place between it and Rogers, beyond a reasonable period to allow the parties to wind up this business arrangement in an orderly fashion. More specifically, the Commission considers that the LSA is a potential impediment to healthy competition between these local broadcasters and might discourage other broadcasters from entering the market in the future and, in addition, may well have a negative impact on the diversity and quality of programming for the reasons discussed in Public Notice 2005-10. Its termination would thus be in the public interest.

14. Accordingly, the Commission authorizes the licensee, by **condition of licence**, to continue to operate its station under the terms of the current Sudbury LSA until no later than 31 May 2005, at which time the LSA must be terminated.

#### **Provision of local service**

15. One of the objectives of the broadcasting policy for Canada, as set out in the *Broadcasting Act*, is that the programming provided by the Canadian broadcasting system should offer a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern. The broadcast of news programming by commercial radio licensees, especially local news, is an essential aspect of their responsibility to ensure the provision of this diversity of views. For these reasons, the Commission is not satisfied with the level of local service, particularly news, provided by CHNO-FM to listeners in the Sudbury market. These concerns were not alleviated by the licensee's response to interveners. In the Commission's view, these responses indicated a rudimentary news service that is under-staffed, and far too reliant on outside sources, including the news services of other local television and radio broadcasters. Moreover, the Commission reminds the licensee that "entertainment reports" are specifically excluded from the definition of "news"<sup>1</sup>. Based on the information provided, the Commission is not convinced that CHNO-FM offers Sudbury listeners a distinctive news voice.
16. The Commission expects the licensee to take immediate steps to enhance the news component of the station's programming by, at a minimum, adding news on additional occasions on weekdays and initiating weekend news. Overall, Newcap should ensure that its listeners receive regular news reports, and other spoken word material of direct and particular relevance to Sudbury, each day. The Commission requires the licensee to file a report within 90 days of the date of this decision, describing the steps it has taken to enhance its news service.

#### **Conclusion**

17. On the basis of its review of this licence renewal application, its past performance and the concerns outlined above, the Commission **renews** the broadcasting licence for the radio programming undertaking CHNO-FM Sudbury, from 1 September 2005 to 31 August 2008. The licence will be subject to the **conditions of licence** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, as well as to the condition set out in this decision concerning the Sudbury LSA.
18. The Commission reminds the licensee that it must fulfil the commitments to the development of Canadian talent described in *Acquisition of assets of CHNO-FM*, Decision CRTC 2001-689, 9 November 2001, in which the Commission approved Newcap's application to acquire the assets of the Sudbury station from The Haliburton Broadcasting Group Inc.

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<sup>1</sup> The program category of news is defined in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000.

## **Employment equity**

19. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

*This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>*